

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/08/2002

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.33411 of 2002

P. Joseph Prabu .. Petitioner

-Vs-

1. The Estate Officer
C/o. Defence Estate Office
Madras Circle
No.306, Anna Salai
Teynampet, Chennai - 600 018.

2. The Chief Executive Officer
Cantonment Board
St.Thomas Mount cum Pallavaram
Madras - 600 018. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari as stated therein.

For Petitioner : Mr. Dulip Singh
For M/s. King & Patridge

For Respondents : ----

:O R D E R

Aggrieved by the notice dated 5.8.2002 vide Ref. No. EO/N/4/PVM/GC& St388/121&122/7mc issued under Section 5-A(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as the "Act"), requiring the petitioner to showcause personally on 22.8.2002 at 1130 hours why the unauthorised construction put up by the petitioner in the public premises should not be removed, the petitioner seeks a writ of Certiorari to call for the entire records relating to the notice dated 5.8.2002 and to quash the same.

2. According to Mr. Dulip Singh, learned counsel appearing for the petitioner, the petitioner has not been heard before passing of the notice dated 5.8.2002 under Section 5-A(2) of the Act, proposing to remove alleged unauthorised construction in the public premises; and when the Act contemplates the issue of notice to show cause against the order of eviction

under Section 4 of the Act and to give an opportunity to the petitioner before passing an order under Section 5 of the Act, which is admittedly appealable, the respondents ought not to have hastened to pass the impugned order under Section 5-A(2) of the Act.

3. In my considered opinion, the object of the procedure contemplated under Section 4 and 5 of the Act is quite different from the procedure contemplated under Section 5-A, 5-B and 5-C of the Act.

4. In this regard, I am obliged to extract Sections 4, 5, 5-A, 5-B and 5-C of the Act, which reads as under.

Section 4:

Issue of notice to show cause against order of eviction.-

(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all the persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, -

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

Section 5:

Eviction of unauthorised occupants.-

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of Section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,

the estate officer or any other officer duly authorised by the estate officer in this behalf may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person from, and take possession of the public premises and may, for that purpose, use such force as may be necessary.

Section 5-A:

Power to remove unauthorised constructions, etc.-

(1) No person shall

(a) erect or place or raise any building or any movable or immovable structure or fixture,

(b) display or spread any goods,

(c) bring or keep any cattle or other animal,

on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought to be kept, on any public premises, in contravention of the provisions of sub-s on 91) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue.

Section 5-B:

Order of demolition of unauthorised construction.-

(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed, on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection of work shall be demolished by the

person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order:

Provided that no order under this sub-section shall be made unless the person concerned has been given, by means of a notice of not less than seven days served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.

(2) Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under Section 9.

(3) The estate officer shall cause every order made under subsection 91), or, as the case may be, under sub-section (2), to be affixed on the outer door or some other conspicuous part, of the public premises.

(4) Where no appeal has been preferred against the order of demolition made by the estate officer under sub-section (1) or where an order of demolition made by the estate officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the estate officer or any other officer duly authorised by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition within such time, and in such number of instalments, as may be specified in the order.

Section 5-C:

Power to seal unauthorised constructions.-

(1) It shall be lawful for the estate officer, at any time, before or after making an order of demolition under Section 5-B, to make an order directing the sealing of such erection or work or of the public premises in which such erection or work has been commenced or is being carried on or has been completed in such manner as may be prescribed, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on has, or have been sealed, the estate officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except-

(a) under an order made by the estate officer under subsection (2);

or

(b) under an order of the appellate officer made in an appeal under this Act."

5. While Section 4 and 5 of the Act deals with the procedure to be adopted while ordering eviction of unauthorised occupants from the public premises, Section 5-A, 5-B and 5-C of the Act deals with removal, demolition and power to seal unauthorised construction put up in the public premises.

6. A bare reading of the above Sections makes it clear that whether the respondents do or do not propose to evict the petitioner under Sections 4 and 5 of the Act, the respondents are entitled to invoke Sections 5-A, 5-B and 5-C of the Act to remove, demolish or seal the unauthorised construction put up by the petitioner in the public premises. Therefore, pendency of the proceedings contemplated under Sections 4 and 5 of the Act, in the instant case, will not, in any way, be an impediment to invoke proceedings under Section 5-A, 5-B and 5-C of the Act.

7. That apart, I am unable to appreciate the contention of the learned counsel for the petitioner that the petitioner has not been heard nor given an opportunity, before passing of the notice dated 5.8.2002, proposing to remove the unauthorised construction. No doubt, by the impugned proceedings, the respondents also proposed to remove the building. But, both the clauses in the impugned notice has to be read together, viz. to show cause personally on 22.8.2002 at 1130 hours why the alleged unauthorised construction should not be removed and if he fails to show cause against the proposed removal of unauthorised construction, then only the respondents would take action to remove the alleged unauthorised construction. If that be so, the petitioner, by the impugned proceedings, cannot complain that he has been deprived of putting his case to the respondents, since the impugned notice dated 5.8.2002 itself provides an opportunity to the petitioner to show cause personally on 22.8.2002 at 1130 hours as to why the alleged unauthorised construction put up by him should not be removed on or before the mentioned date. It is left open to the petitioner to avail the opportunity given in the notice dated 5.8.2002 or not. Therefore, the contention that the petitioner has been deprived of an opportunity to submit his case before ordering for removal of unauthorised construction cannot be accepted.

8. Hence, except to permit the petitioner to submit his detailed explanation or objection as the case may be, against the proposed removal of alleged unauthorised construction in the public premises and to direct the respondents to give an opportunity to the petitioner of being heard in that regard, before passing appropriate orders, pursuant to the impugned notice dated 5.8.2002 and to give reasonable time of one month to the petitioner to work out his further course of remedy against the proposed removal of unauthorised construction and till then to restrain the respondents from removing the alleged unauthorised construction, no further order is required.

The writ petition is dismissed with the above directions. No costs.
Consequently, WPMP No.49506 of 2002 is also dismissed.

20.8.2002.

To

1. The Estate Officer
C/o. Defence Estate Office
Madras Circle
No.306, Anna Salai
Teynampet, Chennai – 600 018.

2. The Chief Executive Officer
Cantonment Board
St.Thomas Mount cum Pallavaram
Chennai - 600 018.

Kpl

P.D. DINAKARAN, J.

□